

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Case No. 19-CR-67
)	Green Bay, Wisconsin
vs.)	
)	January 17, 2020
XENGXAI YANG,)	3:51 p.m.
)	
Defendant.)	
)	

TRANSCRIPT OF CHANGE OF PLEA
BEFORE THE HONORABLE WILLIAM C. GRIESBACH
UNITED STATES SENIOR DISTRICT JUDGE

APPEARANCES:

For the Plaintiff

UNITED STATES OF AMERICA: United States Department of
Justice
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TRANSCRIPT OF PROCEEDINGS

Transcribed From Audio Recording

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THE CLERK: The Court calls Case No. 19-CR-67, United States versus Xengxai Yang. May I have appearances, please.

MR. MAIER: Andrew Maier for the United States.

MR. MUSOLF: Attorney Kevin Musolf on behalf of Xengxai Yang who appears in person and in custody.

PROBATION AGENT: Good afternoon, Your Honor. Brian Koehler on behalf of probation.

THE COURT: Good afternoon all. So I have the written plea agreement, and it appears from the plea agreement that Mr. Yang will be entering pleas of guilty to the charges of armed bank robbery Count 1 and brandishing a short-barreled firearm during and in relation to a crime of violence as set forth in Count 2.

And Count 2, as I understand it, carries a mandatory minimum sentence of ten years consecutive to any sentence imposed in Count 1.

MR. MAIER: Correct.

THE COURT: And Mr. Musolf, have you gone over the plea agreement with your client?

MR. MUSOLF: Yes, Your Honor.

THE COURT: Now, I know we had -- We had an evaluation done earlier at your request. I think Mr. Musolf,

1 you had raised the possibility -- Was that a competency or
2 insanity defense?

3 MR. MUSOLF: Insanity, Your Honor.

4 THE COURT: You don't have doubts about his ability to
5 proceed?

6 MR. MUSOLF: No, I do not.

7 THE COURT: In terms of the insanity defense, you have
8 investigated that satisfactorily or sufficiently, satisfactorily
9 going forward?

10 MR. MUSOLF: Yes.

11 THE COURT: You've discussed that fully with your
12 client?

13 MR. MUSOLF: Yes.

14 THE COURT: Okay. Well, have you discussed really all
15 of the facts and circumstances of the case, gone over the plea
16 agreement and gone over the discovery materials with your
17 client?

18 MR. MUSOLF: Yes, Your Honor.

19 THE COURT: Are you satisfied that should he proceed
20 to enter a plea of guilty today, it will be a knowing and
21 voluntarily plea to each of the counts?

22 MR. MUSOLF: Yes.

23 THE COURT: Okay. And tell me about the plea
24 agreement here, Mr. Maier.

25 MR. MAIER: Your Honor, the defendant will be entering

1 pleas to Count 1 and Count 2 as you mentioned. At sentencing,
2 the defense will be free to argue. The Government will be
3 asking for a sentence in the guidelines range for Count 1 with a
4 consecutive ten-year sentence, 120 months as to Count 2. My
5 estimate for the guidelines on Count 1 is 37 to 46 months.

6 THE COURT: Okay. Other counts are being dismissed?

7 MR. MAIER: Correct. There was a possession of short
8 barrel rifle count, that's Count 3, and the Government will be
9 asking to dismiss that at sentencing?

10 THE COURT: And that was a maximum of ten year
11 sentence?

12 MR. MAIER: Yes.

13 THE COURT: Okay. And so he'll receive acceptance
14 reductions for acceptance of responsibility?

15 MR. MAIER: Right.

16 THE COURT: And it is a strong case in any event?

17 MR. MAIER: Yes, very much so.

18 THE COURT: Okay. Mr. Musolf, anything to add on
19 those matters?

20 MR. MUSOLF: No, Your Honor.

21 THE COURT: Mr. Yang, you've heard what the attorneys
22 have told me. Is it your intention now to enter a plea of
23 guilty to those charges?

24 DEFENDANT: Could you repeat that, please?

25 THE COURT: Is it your intention to enter pleas of

1 guilty now pursuant to this plea agreement?

2 DEFENDANT: Yes, Your Honor.

3 THE COURT: Mr. Yang, would you please stand then and
4 raise your right hand. The clerk is going to administer the
5 oath before I ask you any further questions.

6 Xengxai Yang, being first duly sworn to tell the
7 truth, the whole truth, and nothing but the truth, testified as
8 follows:

9 DEFENDANT: Yes.

10 THE COURT: You can be seated. Is this your family in
11 back?

12 DEFENDANT: Yes, Your Honor.

13 THE COURT: Okay. Mr. Yang, the rules that govern the
14 proceedings in federal court require that anyone who enters a
15 plea of guilty first has to be placed under oath. And that's
16 why we placed you under oath so you should understand that now
17 that you've sworn to tell the truth, you're subject to penalties
18 for perjury or false swearing if you fail to tell the truth. Do
19 you understand that?

20 DEFENDANT: Yes.

21 THE COURT: Okay. The other thing you should
22 understand today is that you don't have to enter pleas of
23 guilty. You could go to trial on all the charges in the
24 indictment. The purpose of today's hearing is to make sure that
25 if you do enter a plea of guilty to these charges, they are the

1 result of knowing and voluntarily decisions on your part.

2 In other words, your attorney can advise you, but it
3 has to be your decision whether to plead guilty or not plead
4 guilty, okay. Do you understand that?

5 DEFENDANT: Yes.

6 THE COURT: Okay. For the record then, tell me your
7 name.

8 DEFENDANT: Xengxai.

9 THE COURT: And your last name is?

10 DEFENDANT: Yang.

11 THE COURT: And how old are you?

12 DEFENDANT: Just turned 20.

13 THE COURT: Just turned 20, where did you grow up?
14 Where did you live before you got put in jail? I mean, I am
15 just looking for the city.

16 DEFENDANT: Appleton.

17 THE COURT: Okay. Did you go to school there?

18 DEFENDANT: Yeah.

19 THE COURT: How far did you go in school?

20 DEFENDANT: Eleventh grade.

21 THE COURT: Were you in special ed?

22 DEFENDANT: Yes.

23 THE COURT: Did you have an accident at some point in
24 life?

25 DEFENDANT: Yes, I did.

1 THE COURT: And what kind of accident did you have?

2 DEFENDANT: A head injury at work.

3 THE COURT: Had injury at work?

4 DEFENDANT: A head injury.

5 THE COURT: When was that?

6 DEFENDANT: I'm not sure. I forgot when.

7 THE COURT: Okay. Has that affected your ability to
8 remember things?

9 DEFENDANT: Yeah and hear voices and stuff.

10 THE COURT: Okay. And this is why Mr. Musolf you
11 asked for that investigation?

12 MR. MUSOLF: Yes.

13 THE COURT: Okay. Or evaluation. So you went to up
14 to 11th grade?

15 DEFENDANT: Yeah.

16 THE COURT: Before you were put in jail, did you live
17 -- Did you live with other people?

18 DEFENDANT: I lived with my parents.

19 THE COURT: Okay. And did you work?

20 DEFENDANT: Yeah, I was working.

21 THE COURT: Where were you working?

22 DEFENDANT: I was working at what was it called? I
23 forgot. It was a cheese factory.

24 THE COURT: Cheese factory. You don't remember the
25 exact name, but it was a cheese factory. What did you do at the

1 cheese factory? Were you a cheese maker or a custodian or did
2 you clean things or what did you do?

3 DEFENDANT: I was a cheese operator.

4 THE COURT: Operator. So you worked on machines?

5 DEFENDANT: Yes.

6 THE COURT: Did you sometimes load things?

7 DEFENDANT: No.

8 THE COURT: Okay. And how long did you work at the
9 cheese factory?

10 DEFENDANT: I'm not sure.

11 THE COURT: Did you have a different job before you
12 started working at the cheese factory?

13 DEFENDANT: I can't recall.

14 THE COURT: Are you married? Do you have a wife?

15 DEFENDANT: I have a fiance.

16 THE COURT: Fiance. Do you have any children?

17 DEFENDANT: Yeah, Your Honor, I have one.

18 THE COURT: Is that child in back?

19 DEFENDANT: Yes, Your Honor.

20 THE COURT: And is that the one that's being held
21 there or --

22 DEFENDANT: Yeah, the one in the blue.

23 THE COURT: In the blue?

24 DEFENDANT: Yes.

25 THE COURT: Is that a boy?

1 DEFENDANT: Yeah.

2 THE COURT: How old is your son? Four months or so?

3 DEFENDANT: I think so.

4 THE COURT: Do you know how to read?

5 DEFENDANT: Yeah.

6 THE COURT: Did you read over the plea agreement?

7 DEFENDANT: Yes, I did.

8 THE COURT: And is that your signature on it? In
9 other words, did you sign it?

10 DEFENDANT: Yeah, I signed it.

11 THE COURT: And before you signed it, did you talk
12 about it, talk to your attorney about it?

13 DEFENDANT: Yes, I did.

14 THE COURT: And did he explain it to you?

15 DEFENDANT: He explained it.

16 THE COURT: Did he answer whatever questions you might
17 have had?

18 DEFENDANT: Yes.

19 THE COURT: As you sit here today Mr. Yang, are you
20 under the influence of anything? And what I mean by that is did
21 you take any drugs, any alcohol, any medications before you came
22 to court today that would affect your ability to understand
23 these proceedings or to make a decision?

24 DEFENDANT: No, I didn't take anything.

25 THE COURT: You're in the Brown County Jail?

1 DEFENDANT: Yes.

2 THE COURT: That's where you've been?

3 DEFENDANT: Yeah.

4 THE COURT: Okay. You're not -- You don't have
5 access to drugs or alcohol there?

6 DEFENDANT: I was taking medicine for the voices and
7 memory loss and I was recovering from it, and then they stopped
8 giving me the medicine.

9 THE COURT: Okay. Since they stopped giving you that
10 medication, have the voices come back?

11 DEFENDANT: I still here and there but not anymore.

12 THE COURT: Not anymore.

13 DEFENDANT: Sometimes I have flashbacks, and that's
14 how I regain my memory again.

15 THE COURT: Sure. Did that interfere at all with your
16 ability to talk with Mr. Musolf and understand your case?

17 DEFENDANT: Could you repeat that again?

18 THE COURT: Did your -- the voices interfere with your
19 ability to communicate with Mr. Musolf, your attorney?

20 DEFENDANT: No.

21 THE COURT: Okay. All right. We're going to go over
22 some of the provisions of the plea agreement that you signed to
23 make sure the record we're making today reflects the fact that
24 you understand the charges and the decision and the rights
25 you're giving up, okay?

1 DEFENDANT: Okay.

2 THE COURT: And I'll begin with the elements or the
3 pieces that make up the crime you're pleading guilty to, okay.
4 They are listed in paragraph 9 and paragraph 10 if you want to
5 read along.

6 Now, Mr. Yang, I always emphasize the elements because
7 this tells you what the Government would have to prove in order
8 for you to be found guilty if this case were to go to a trial,
9 okay? As to the charge of bank robbery, the Government would
10 have to prove, first, that you took or attempted to take from
11 the person or presence of another money belonging to or in the
12 possession of Community First Credit Union. That's the first
13 thing the Government would have to prove. That's paragraph 9,
14 page 4.

15 The second element the Government would have to prove
16 is that you took the money, the deposit, of the credit union.
17 At the time you took the money the deposits of the credit union
18 were insured by the National Credit Union Administration.

19 Third, the Government would have to prove that you
20 took or attempted to take such money by means of force or
21 violence or by means of intimidation. That's third.

22 And then fourth, the Government would have to prove
23 that you assaulted or put in jeopardy the life of another person
24 by the use of a dangerous weapon or a device while committing or
25 attempting to commit the crime.

1 Now, assault -- The word assault as used here means to
2 intentionally attempt or threaten to inflict bodily injury upon
3 another person with the apparent and present ability to cause
4 such injury such that you've created in the victim a reasonable
5 fear or apprehension of bodily harm. An assault may be
6 committed without actually touching, striking or injuring the
7 other person. Do you understand those things?

8 DEFENDANT: Yes.

9 THE COURT: So that's Count 1. Count 2, the charge of
10 brandishing a firearm in furtherance of a crime of violence,
11 that would require proof of these elements. First of all, the
12 Government would have to prove that you committed the bank
13 robbery as charged in Count 1. And second, the Government would
14 have to prove that you knowingly used a firearm during and in
15 relation to that crime. Use means the active employment of a
16 firearm. The term is not limited to use as a weapon. It
17 includes brandishing or displaying. So you don't have to have
18 fired it. If you brandished it, which means show it to the
19 person and point it at them sometimes, that would be using the
20 firearm.

21 And in addition in order for you to be subject to the
22 enhanced sentence here, the ten-year mandatory minimum, the
23 Government would also have to prove that the firearm you used or
24 brandished during the bank robbery was a short-barreled rifle.
25 That means a rifle with a barrel of less than 16 inches in

1 length.

2 So those are the things the Government would have to
3 prove for you to be found guilty of these offenses. Do you have
4 any questions about the elements or what the Government would
5 have to prove, Mr. Yang?

6 DEFENDANT: No, Your Honor.

7 THE COURT: Okay. Then, you should understand what
8 the penalties are for these offenses. The maximum sentence for
9 the first offense is 25 years in prison. That's the most you
10 can get for that offense. The maximum fine is \$250,000. Then
11 Count 2, the maximum is life in prison. The maximum fine is
12 \$250,000 again, but there's a mandatory minimum sentence of ten
13 years in prison for Count 2. And that mandatory minimum ten
14 years has to be consecutive to any sentence imposed in Count 1.

15 So in other words, I have to sentence you if you're
16 found guilty of both of these offenses first for the bank
17 robbery, and then I have to sentence you for the brandishing a
18 firearm. And the lowest sentence you can receive for that crime
19 is ten years, and that has to come after. You have to serve the
20 bank robbery sentence before you serve the brandishing a firearm
21 or use of a firearm one. Do you understand that?

22 DEFENDANT: Yes.

23 THE COURT: Okay. So the lowest sentence you can
24 receive if you're found guilty of these two offenses is really
25 ten years in prison, ten years. I could give you time served.

1 So it would be ten years plus which you've already served maybe
2 or some amount of it. That's the lowest sentence. The highest
3 sentence you can receive for these offenses is life. Do you
4 understand that?

5 DEFENDANT: Yes.

6 THE COURT: Okay. Now, if you plead guilty to these
7 offenses today and if I accept your pleas to those sentences, I
8 will find you guilty today. There's going to be no trial. You
9 understand that?

10 DEFENDANT: Yes.

11 THE COURT: The next hearing we have would be the
12 sentencing hearing. The first thing I would do at the
13 sentencing hearing is I would determine what the sentence range
14 is for someone in your position under the United States
15 Sentencing Guidelines. And Mr. Maier told me that the guideline
16 was in the area of 36, was it?

17 MR. MAIER: 36 to 47 months.

18 THE COURT: 36 to 47 months for Count 1, the bank
19 robbery. And then if I impose the guideline sentence let's say
20 36 months, you would get -- that would be three years. I have
21 to give you at least ten years on the other charge. So the
22 lowest if I went to the guidelines would be 13 years. Do you
23 understand that?

24 DEFENDANT: Yes.

25 THE COURT: Okay. The guidelines are guides to the

1 Court. They are not mandatory instructions. So although I have
2 to consider the guidelines, I'm free to impose a sentence that's
3 either above or below the guidelines as long as I give good
4 reasons for doing that. Do you understand that?

5 DEFENDANT: Yes, Your Honor.

6 THE COURT: Do you also understand how the guidelines
7 work? They require that I determine, you know, the score for
8 the severity of the offense and that's really based upon, you
9 know, the kind of crime it is that gives me a number. The fact
10 that a un was in involved may increase the number, things like
11 that. It may go down because you are entering a plea of guilty.
12 It goes down for three levels. One, I determine that then I
13 look to your Criminal History Category. And what is his
14 Criminal History Category?

15 PROBATION AGENT: One.

16 THE COURT: No record?

17 PROBATION AGENT: Correct.

18 THE COURT: So those two variables, the absence --
19 the Criminal History Category and offense severity score will
20 point me to a sentence range in which your sentence would fall.
21 Do you understand that?

22 DEFENDANT: Yes.

23 THE COURT: Okay. You should also understand I am not
24 bound by the recommendations of the attorneys. I listen closely
25 to what the Government will recommend and what your attorney

1 will recommend, but that's not -- I have to make my own
2 decision. Do you understand that?

3 DEFENDANT: Yes, Your Honor.

4 THE COURT: What I can't do is go below a mandatory
5 minimum. If there's a ten year mandatory minimum here, I have
6 to impose that. Do you understand that?

7 DEFENDANT: Yes.

8 THE COURT: Okay. Now, by entering this plea, you're
9 giving up. You're waiving your right to a jury trial and the
10 rights that go with a jury trial. That's also described in the
11 plea agreement. But let me ask you, Mr. Yang. Do you
12 understand what a jury trial is?

13 DEFENDANT: Yes.

14 THE COURT: Can you tell me in your own words what a
15 jury trial is?

16 DEFENDANT: Jury trial is when there's people from
17 outside that comes in and testifies or like to see if you're
18 guilty or not guilty.

19 THE COURT: Yeah, they have people that testify but a
20 jury, they are the fact finder. They decide whether the
21 Government has proven guilt beyond a reasonable doubt. I'll
22 give you an explanation of it to make sure you understand it,
23 okay?

24 DEFENDANT: Yes.

25 THE COURT: A jury trial is the procedure we use to

1 resolve the case, to resolve the case, you know, when the
2 parties don't reach agreement. You've agreed, so we don't have
3 a jury trial. But if you didn't reach agreement, we'd bring in
4 a jury. A jury consists of 12 citizens drawn from the district.
5 Now, throughout a trial, you're present in the courtroom with
6 your attorney even when we select the jury. And in a case like
7 this, I'd bring in -- I'd summons in close to 50 people from
8 the community. From that larger number, we ask them questions
9 to test their qualifications to make sure they can be fair and
10 impartial and they have no interest in the outcome of the case.
11 Once we qualify the required number of jurors, a list with their
12 names on it gets passed back and forth between the attorneys.
13 And they take strikes to get down to the 12 people of the jury
14 that we then seat in the jury box over here.

15 The Government would then try to prove your case by
16 calling witnesses who testify under oath from this witness stand
17 over here. You can watch them testify, kind of look them in the
18 eye so to speak. And through your attorney, you can ask them
19 questions, cross examine them. That's what we call your right
20 to confront the witnesses against you.

21 After the Government has completed its evidence, you
22 may but are not required to put on a defense. You don't have to
23 put on a defense because it's the Government's burden to prove
24 guilt beyond a reasonable doubt. But if you choose to, you can
25 call your own witnesses. If there are witnesses that you want

1 to call that don't want to come to court, you can get a court
2 order or what we call a subpoena that compels them to come so
3 you can present that testimony.

4 At a trial, you would also have the right to testify
5 on your own behalf, tell the jury your side of story so they can
6 consider that in deciding whether the Government had met its
7 burden. On the other hand, you don't have to testify. And if
8 you decided not to testify, I would instruct the jury that's
9 your right. They can't hold it against you or treat it as
10 evidence in any way.

11 After all the evidence is in, then I instruct the jury
12 on the elements of the offense. I tell them what they have to
13 find in order to find you guilty, but I also tell them that
14 you're presumed to be not guilty. And the jury may not return a
15 verdict of guilty unless all 12 unanimously agree that the
16 Government had proven guilt beyond a reasonable doubt. So those
17 are the rights you're giving up. Any questions about those?

18 DEFENDANT: No.

19 THE COURT: Has anyone made any promises to you to get
20 you to waive your rights and enter a plea of guilty to these
21 offenses other than the promises that are set forth in writing
22 in the plea agreement?

23 DEFENDANT: No.

24 THE COURT: Has anyone made any threats against you or
25 anyone else to get you to do so?

1 DEFENDANT: No.

2 THE COURT: Are you pleading guilty to these offenses
3 then because you are guilty of these offenses?

4 DEFENDANT: Yes, Your Honor.

5 THE COURT: Do you have any questions about anything
6 I've asked you or anything in the plea agreement?

7 DEFENDANT: No.

8 THE COURT: Mr. Maier, any other area of inquiry you
9 think I should go into?

10 MR. MAIER: No, thank you, Your Honor.

11 THE COURT: And Mr. Musolf, any other area you think I
12 should go into?

13 MR. MUSOLF: No, Your Honor. Thank you. Very well
14 then. Mr. Yang tell me out loud and for the record what is your
15 plea to the charge of armed bank robbery as charged in Count 1
16 of the indictment your plea?

17 DEFENDANT: Plead guilty.

18 THE COURT: Okay. And Count 2, the charge of
19 brandishing -- using a firm in furtherance of a crime of
20 violence as charged in Count 2, your plea?

21 DEFENDANT: Plead guilty.

22 THE COURT: Okay. In order to accept your pleas, I
23 not only have to make sure that they are entered knowingly and
24 voluntarily, but I also need to be sure there's a factual basis
25 for your pleas. And the Government has offered as a factual

1 basis a summary of the evidence it believes it would be able to
2 introduce if this case went to trial, and that's in paragraph 5
3 on pages 2 and 3. Do you have any objection to my relying upon
4 the Government's summary of evidence there for the purpose of
5 accepting your plea here today? Are those facts essentially
6 true that they describe in the plea agreement? In other words,
7 you went into the Community First Credit Union wearing a black
8 hooded sweatshirt, theater mask and sunglasses, and you had the
9 Savage semi-automatic .22 with the sawed-off barrel? Did you do
10 all that?

11 DEFENDANT: Yes, I did.

12 THE COURT: Why did you do that?

13 DEFENDANT: I was -- that day I was playing a video
14 game. So after my head injury, I wasn't sure what was going on.
15 I was confused of everything, and I just thought that things
16 that was wrong were right. After playing the video game, I just
17 thought that I was in the video game, and I went to go rob a
18 bank.

19 THE COURT: And Mr. Musolf, you've investigated this
20 sufficiently to conclude that this -- There's not a valid
21 insanity defense here?

22 MR. MUSOLF: Yes, Your Honor.

23 THE COURT: I note that the report is on file.

24 MR. MUSOLF: We do acknowledge the report, and I guess
25 we agree it doesn't rise to the level of a legal insanity

1 defense despite the fact that there are some issues.

2 THE COURT: Okay. Very well. If these facts then --
3 If you're agreeing those facts are correct, I'm satisfied on
4 this record that pleas are entered knowingly and voluntarily.
5 The defendant understands the elements of the offense, the
6 maximum penalties, the mandatory minimums. He understands the
7 guidelines. He also understands the rights he's giving up by
8 entering pleas of guilty. He's freely and voluntarily waived
9 those rights, freely and voluntarily likewise entered those
10 pleas of guilty, and there is a factual basis set forth on the
11 record that supports the pleas. I accept the pleas of guilty
12 and find the defendant, Xengxai Yang, guilty of armed bank
13 robbery as charged in Count 1 and brandishing a firearm --
14 brandishing a firearm in furtherance of a crime of violence,
15 specifically I find that the firearm involved a short-barreled
16 riffle as defined in Title 26, § 5845(a)(3). He stands then
17 convicted of those offenses on or about 17th of January, 2020, and
18 we'll schedule this matter for sentencing. I've been asked to
19 place it on the calendar the week of April 13, 2020. Mr. Musolf
20 and it is that far down the road because we prepare a very
21 thorough Presentence Report that will tell us more about these
22 things.

23 MR. MUSOLF: I am free all week.

24 THE COURT: Okay. So April 13th, Mr. Maier, how does
25 that look for you?

1 MR. MAIER: Any day any time that week.

2 THE COURT: How about Monday the 13th at 1:30 in the
3 afternoon?

4 MR. MUSOLF: What time?

5 THE COURT: 1:30.

6 MR. MUSOLF: That's fine.

7 MR. MAIER: That's fine. Thank you, Your Honor.

8 THE COURT: Anything else we should address today?

9 Very well then. This matter is concluded. Thank you.

10 (Whereupon proceeding was concluded.)
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C E R T I F I C A T E

I, SUSAN ARMBRUSTER, RMR, Official Court Reporter and Transcriptionist for the United States District Court for the Eastern District of Wisconsin, do hereby certify that the foregoing pages are a true and accurate transcription of the audio file provided in the aforementioned matter to the best of my skill and ability.

Signed and Certified November 15, 2021.

/s/Susan Armbruster

Susan Armbruster

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